

FEDERAL MARITIME COMMISSION

DOCKET NO. 87-12

IN THE MATTER OF MAXIMUM POTENTIAL LIABILITY
IN INDEPENDENT OCEAN FREIGHT FORWARDER BONDS

ORDER GRANTING PETITION FOR DECLARATORY ORDER

Old Republic Insurance Company ("Old Republic"), The Surety Association of America, and the National Customs Brokers & Forwarders Association of America, Inc. ("NCB&FA") (collectively "Petitioners") have filed a Petition for Declaratory Order ("Petition") to terminate a controversy and remove any uncertainty which may exist with respect to the maximum potential liability of a surety under an Ocean Freight Forwarder Bond (FMC-59 Rev.).¹ Specifically, Petitioners ask that the Commission declare that the Commission has consistently interpreted the freight forwarder bonding requirement as prescribing a bond under which the surety's total maximum liability to all potential claimants would, in no event, exceed the penal sum stated in such bond, presently \$30,000.

¹ The bond is required to be filed with the Commission pursuant to section 19, Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1718 (Supp. III 1985), formerly section 44, Shipping Act, 1916 ("1916 Act"), 46 U.S.C. § 841b (1982), and 46 C.F.R. § 510.14 (1986).

The Petition was published in the Federal Register on June 3, 1987 and June 17, 1987 (52 Fed. Reg. 20780, 23080) to allow for replies. Time for replies was extended by further Federal Register Notice published June 30, 1987 (52 Fed. Reg. 24341). Replies in support of the Petition were filed by the Florida Customs Brokers and Freight Forwarders Association ("FCB&FFA") and the Washington International Insurance Company ("WIIC"). American Cast Iron Pipe Company ("ACIPCO") and Kristin Shipping Company ("Kristin"), and the Dow Chemical Company, Dow Chemical International, B.V., Dow Chemical International, Limited and Dow Chemical International, Inc. (Panama) ("Dow") filed replies in opposition. ACIPCO and Kristin also filed a Motion to Deny the Petition ("Motion"), which Petitioners opposed.

BACKGROUND

The controversy and uncertainty which Petitioners seek to resolve through the Petition arises by way of a lawsuit, Lykes Bros. Steamship Co., Inc. v. American Cast Iron Pipe Company, Kristin Shipping Company and Harwell & Cary Inc., Old Republic Insurance Company, Intervenor, CA No. 85-1333T (S.D. Ala.), a principal issue in which is the liability of Old Republic under a freight forwarder bond.

On April 3, 1984, Old Republic issued Independent Ocean Freight Forwarder Bond No. 2992 ("Bond") in the amount of \$30,000 and Surety Bond Form FMC-59 to Harwell & Cary, Inc. ("Harwell"), a freight forwarder located in Mobile, Alabama.

In accordance with Form FMC-59, the Bond stated in part as follows:

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty.

Harwell received sums totaling some \$131,197.56 from ACIPCO, a shipper, which sums were to be paid to Lykes Bros. Steamship Co., Inc. ("Lykes") as freight for carriage to Egypt. Harwell failed to pay and Lykes sued Harwell, ACIPCO, and Kristin, ACIPCO's subsidiary, in U.S. District Court in Alabama ("District Court" or "Court"). On October 22, 1986, Lykes obtained a judgment in the amount due against Harwell.

On November 26, 1986, Old Republic, in order to protect itself from multiple claims and liabilities under the Bond, intervened and filed an interpleader complaint. Old Republic's position before the District Court is that it will pay the \$30,000 amount of the Bond to whomever the Court determines is entitled to it, and that it wishes to be discharged from any further liability. Lykes and ACIPCO and Kristin counterclaimed, contending that Old Republic's liability under the Bond exceeds \$30,000 as a total amount. Lykes' position in the District Court is that Old Republic's liability is \$30,000 for each shipment or bill of lading involved in Lykes' claims, while ACIPCO and Kristin maintain that Old Republic is liable for \$30,000 plus interest for each contract, agreement or arrangement it had with Harwell to serve as an independent ocean freight forwarder.

Old Republic moved to dismiss the counterclaims on the grounds that its total liability on the Bond was limited to \$30,000. The District Court denied Old Republic's motion and set the matter for trial on the merits but granted a motion of Old Republic to postpone trial on its complaint and the counterclaims.

On April 2, 1987, Old Republic took the deposition of Robert G. Drew, Director of the Commission's Bureau of Domestic Regulation, who stated that the Commission staff had consistently interpreted Surety Bond Form FMC-59 as imposing a maximum aggregate liability to all potential claimants no greater than the amount stated on the face of a bond issued in such form.

Trial of the action against ACIPCO and Kristin was held in early April, 1987, and the Court has taken the matter under advisement. In July, the Court denied Old Republic's motion for a stay in its proceedings pending action by the Commission on the Petition for Declaratory Order. Trial on Old Republic's interpleader action and the counterclaims has been set for October 26, 1987.

POSITIONS OF THE PARTIES

A. The Petition and Replies in Support

Petitioners' position is based on: (1) the language and legislative history of the forwarder bond requirement contained in the 1984 Act and formerly contained in the 1916 Act; (2) Congressional action on proposals to increase the

amount of the bond; and (3) the Commission's actions in promulgating rules to implement the bonding requirement and in interpreting these rules.

Petitioners assert that the bond requirement for freight forwarders is not and was never intended to be an indemnity obligation but only to provide some measure of financial responsibility, i.e., to give some assurance that licensed forwarders would be monetarily able to provide the services for which they were responsible.

They further assert that in promulgating regulations to implement the bonding requirement, the Commission established a form of bond which on its face limited liability under it to the face amount of the bond. Petitioners maintain that this position is supported by the fact that the Commission specifically refused to modify the bond form to make the amount of the bond dependent upon numbers of shipments or individual shippers served, numbers of bills of lading or other variables, and that in so doing, the Commission considered and adopted comments arguing for the necessity of a fixed liability and against the indemnity function of the bond.

Petitioners also draw attention to the fact that on three separate occasions Congress rejected bills which would have increased the amount of the bond, and the fact that in enacting the 1984 Act, Congress also preserved the broad discretion of the Commission over bonding requirements. This, Petitioners maintain, is particularly significant

because not only can Congress be presumed to know the actions of the agency but was specifically advised during hearings that the bond would not have, and had never had, an indemnification function.

Petitioners further assert that a bond based on separate transactions (rather than one which provides a single fixed amount) runs afoul of the statutory requirement that the bond must be issued by a surety company found acceptable by the Secretary of the Treasury, since Treasury Department regulations prevent underwriting of open-ended liability bonds.

Finally, Petitioners contend that the Commission has the authority to issue the requested declaratory order, that the controversy here involved is an appropriate one for the issuance of such order, and that the pendency of the proceeding in the District Court does not prevent issuance of the declaratory order.

FCB&FFA and WIIC support Petitioners, pointing out the problems which allegedly would be caused to the forwarding and insurance industries, respectively, of an interpretation of the maximum liability under a forwarder bond contrary to that sought by Petitioners. Specifically, they assert that: (1) such contrary interpretation would result in the disappearance of small or medium size forwarders because they would not have sufficient assets to obtain a bond since bonds are predicated on net worth of three times total liability under the bond; and (2) insurers themselves would

cease to write bonds because they could not insure against unlimited liabilities. These factors are said to have been considered by the Commission in fixing the liability under the forwarder bond.

B. Replies to the Petition in Opposition

ACIPCO and Kristin assert that the Commission is without jurisdiction to issue the requested declaratory order. They maintain that the Commission is empowered to establish forwarder bonding regulations, but only a court can interpret them. They further maintain that, in any case, the present controversy is an inappropriate one for declaratory order because of the nature of the controversy and because the pending District Court proceeding would remove any jurisdiction which the Commission might have had. Alternatively, ACIPCO and Kriston allege that even assuming, arguendo, that the Petition is proper, the statute requires an interpretation that would provide a large measure of protection under a forwarder bond and that the bond, properly construed, in fact provides such protection.

Dow argues that the interpretation sought by Petitioners would be improper because it would put the shipping public at the mercy of unscrupulous forwarders.

DISCUSSION

There are two issues which must be resolved in this proceeding: (1) does the Commission have the authority or jurisdiction to entertain the Petition; and (2) if so,

should the interpretation sought by the Petition be "declared" by the Commission as the proper one. We find that we possess the necessary authority to issue the requested order, and that such order should be issued granting Petitioners' interpretation.

A. Jurisdiction

The Commission has the authority to issue the declaratory ruling here requested. The agency's power is not restricted to promulgation of regulations without the ability to interpret them. Rule 68 of the Commission's Rules of Practice and Procedure specifically provides for the mechanism of a declaratory order with respect to "matters involving conduct or activity regulated by the Commission under statutes administered by the Commission." 46 C.F.R. § 502.68(b) (1986).

The power of agencies to issue declaratory orders has long been established. It is specifically recognized in the Administrative Procedure Act. 5 U.S.C. § 554(e)(b) (1982). Such orders are particularly appropriate to interpret the meaning of "words of art" contained in filings within the regulatory responsibility of an agency. See e.g., Illinois Terminal R. Co. v. ICC, 671 F.2d 1214, 1216 (8th Cir. 1982).

The Commission's authority to establish specific regulations for the freight forwarding industry has also long been upheld. New York Foreign Freight Forwarders and Brokers Assn. v. FMC, 337 F.2d 289 (2d Cir. 1964), cert. denied, 380 U.S. 910, 914 (1965). The courts have,

moreover, stayed proceedings to obtain the Commission's interpretation of its forwarder regulations. New York Foreign Freight Forwarders and Brokers Assn. v. FMC, 384 F.2d 979, 981 (D.C. Cir. 1967).

Courts have frequently recognized that the Commission must interpret its statutes and regulations. The courts are, of course, the final arbiters of questions of law like the one here presented, but the courts also recognize that deference is due to an agency's interpretation of its statute and regulations, and that such interpretations are to be upheld if they are reasonable or tenable interpretations. See e.g., Udall v. Tallman, 380 U.S. 1, 16 (1965); U.S. v. American Trucking Assns., 310 U.S. 534, 549 (1940); Boylan v. U.S. Postal Service, 704 F.2d 573, 576 (11th Cir. 1983), cert. denied, 460 U.S. 939 (1984); Adkins v. Hampton, 586 F.2d 1070, 1074 (5th Cir. 1978); Coca-Cola Co. v. Atchison, T. & S.F. Ry. Co., 608 F.2d 213, 222 (5th Cir. 1979); Frederik v. Kreps, 578 F.2d 555, 561 (5th Cir. 1978); FMC v. Pacific Maritime Association, 435 U.S. 40, 63 (1978).

The bonds established pursuant to Commission regulations cannot be considered private contracts. The terms in them are subject to Commission interpretation. In fact, it has been held that the same deference is due Commission interpretation of "contracts" it regulates as is due to its interpretation of its statute and regulations. See e.g., FMC v. Australia/U.S. Atlantic & Gulf Conf., 337

F.Supp. 1032, 1037 (S.D.N.Y. 1972); Swift & Co. v. FMC, 306 F.2d 277, 281 (D.C. Cir. 1962); Trans-Pacific Frgt. Conf. of Japan v. FMC, 314 F.2d 928, 935 (9th Cir. 1963).

The bonding requirement is established by statute and the specific bond amount is set forth in regulations and bond forms promulgated by the Commission pursuant to such authority. The 1984 Act provides that "[N]o person may act as an ocean freight forwarder unless that person holds a license issued by the Commission." The furnishing of a bond "in a form and amount determined by the Commission to insure financial responsibility . . ." is a prerequisite to issuance of a license. "The Commission may also revoke a forwarder's license for failure to maintain a bond [in such form and amount]. . . ." Section 19, Shipping Act of 1984.

The Commission has implemented those statutory requirements by establishing a bond form and amount, now \$30,000 and \$10,000 for each unincorporated branch office (see 46 C.F.R. § 510.14(a)), and providing for automatic cancellation if a bond in such form and amount is not maintained (see 46 C.F.R. § 510.24(d)). In order to carry out these statutory and regulatory obligations, the Commission must necessarily make interpretations and resolve issues relating to the bonding requirements. The bonding function and amount of bond liability would therefore appear to constitute "conduct or activity regulated by the Commission."

ACIPCO and Kirstin cite no authority for the proposition that the pendency of the proceeding in the District Court prevents the Commission from acting here. Their vague reference to "collateral estoppel" seems misplaced. The principle of collateral estoppel bars relitigation only of issues "actually litigated and necessary to the outcome of the first action." Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326 n. 5 (1979). The contention that the mere pendency of a suit in the District Court prevents action here runs counter to the whole doctrine of "primary jurisdiction," pursuant to which district courts may stay their proceedings to obtain the views of an agency. See e.g., Marine Terminal v. Rederi Transatlantic, 400 U.S. 62, 68 (1970); Carnation Co. v. Pacific Westbound Conference, 383 U.S. 214, 220-22, amended, 383 U.S. 932 (1966); Far East Conference v. U.S., 342 U.S. 570 (1952); United States Navigation Co. v. Cunard Steamship Co., 284 U.S. 474 (1932); Maddock & Miller, Inc. v. United States Lines, 365 F.2d 98, 102 (2d Cir. 1966); Ricci v. Chicago Mercantile Exchange, 409 U.S. 289, 306-08, rehearing denied, 410 U.S. 960 (1973). Cases frequently proceed in several forums at the same time, and it is not improper for them to do so. See e.g., Landis v. North American Co., 299 U.S. 248 (1936); Moses H. Cone Memorial Hospital v. Mercury Construction Corporation, 460 U.S. 1 (1983); Colorado River Water Conservation District v. U.S., 424 U.S. 800 (1976).

As noted above, the issue here presented by the Petition is one which appears to fall within the literal language of the Commission's declaratory order rule. This is not to say, however, that the Commission is required to entertain the Petition. It has upon occasion declined to issue such an order because of the pendency of adjudicatory proceedings. See Compensation of Freight Forwarders, 19 S.R.R. 1741 (1980); Seatrains International, S.A., 18 S.R.R. 805 (1978); Pacific Westbound Conference, 21 S.R.R. 1361, 1366-67 (1982); Lease Agreement T-3753, 21 S.R.R. 306 (1981). On other occasions, however, it has issued declaratory rulings despite pending court or administrative proceedings. See Ocean Shipments Via American President Lines, 21 S.R.R. 1168 (1982); Philip R. Consolo v. Flota Mercante Grancolombiana, 7 F.M.C. 635, 640 (1963). In this instance, we will entertain the Petition. We deal here not with a tariff or agreement filed with the agency but with a regulation and form which the Commission itself has prescribed. The issue in this proceeding, unlike the issues in the District Court, is simple and clear-cut, and its resolution may aid the Court in simplifying and disposing of the multiple issues before it. See e.g., Maryland Port Administration v. S.S. American Legend, 453 F.Supp. 584, 593 (D. Md. 1978). Finally, we wish to give some guidance because of the widespread effect of the requested action on many segments of the maritime industry.

Before turning to the merits of the Petition, there is a procedural matter which should be addressed. ACIPCO and Kristin moved to deny the Petition on jurisdictional and procedural grounds under Rule 73 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.73, as well as filing a reply to the merits of the Petition. Both pleadings were filed within the time provided for replies to the Petition, and Petitioners have responded in opposition to the Motion. Technically, the Motion appears unauthorized since Rule 68 provides only for "replies" and states that "No additional submissions will be permitted unless ordered or requested by the Commission" 46 C.F.R. § 502.68(e).² However, it appears unfair to prevent one not experienced in Commission practice from making legal arguments based on a technicality. Similarly, it appears unfair to Petitioners, if the Motion is accepted as a proper pleading, to prevent them from addressing arguments raised therein. Therefore, we will treat the Motion as part of Kristin/ACIPCO's reply and waive the prohibition against "replies to replies" to allow Petitioners' responses and prevent "manifest injustice." (See 46 C.F.R. § 502.10).

² See also Rules of Practice and Procedure, Petitions for Declaratory Order, 19 S.R.R. 7, 8 (1979),

". . . [W]e are adopting a filing schedule limited to petitions and replies with such filings to be accompanied by the party's complete legal and factual presentation as to its desired disposition of the merits of the petition."

B. The Merits of the Petition

The issue presented by the merits of the Petition is relatively straightforward. Basically, we must decide if the bonding requirement of the statute was intended to provide a broad quasi-indemnity type protection for beneficiaries of the bond, as the opponents to the Petition contend, or only to provide some measure of financial responsibility, as Petitioners and their supporters assert.

The language of the statute and its legislative history are not particularly revealing in this regard. The statutory bonding requirement was originally enacted in 1961 as a part of the licensing authority for freight forwarders. At that time it provided that

no such license shall be issued or remain in force unless such forwarder shall have furnished a bond or other security approved by the Commission in such form and amount as in the opinion of the Commission will insure financial responsibility and the supply of the services in accordance with contracts, agreements, or arrangements therefor.

Pub.L. No. 87-254, § 2, 75 Stat. 522 (1961). "Financial responsibility" was not defined. The legislative history to the 1961 amendments is also not helpful, since the Congressional reports virtually repeat the language of the statute with respect to the bonding requirement. See H.R. Rep. No. 1096, 87th Cong., 1st Sess. 2 (1961); S. Rep. No. 691, 87th Cong., 1st Sess. 2 (1961). All that can realistically be said is that "financial responsibility" is not self-defining and that the task of defining it with respect to the form and amount of the bond, was left to "the opinion of the Commission."

The original regulations implementing the forwarder licensing authority set the bond amount at \$10,000. In 1978 this amount was increased to \$30,000. FMC Docket No. 77-53, Rules - Licensing Freight Forwarders, 20 F.M.C. 892, 893-95 (1978). The \$30,000 amount was set by the Commission as an amount which would strike a proper balance between the two objectives which it was required to pursue: (1) the provision of "some degree of protection to the shipping public," and (2) the preventing of hardship on small forwarders, detriment to the shipping public and possible reduction of forwarders with a corresponding lessening of competition.

During the course of the proceeding in Docket No. 77-53 many parties, including Commission Hearing Counsel, contended that small forwarders could not obtain a bond in the \$50,000 amount originally proposed by the Commission because such bond would require the pledging of large collateral or the establishment of net worth in several times this amount, something beyond the reach of many forwarders. (See, e.g., comments of Amersped, Inc., M & A Cargo Services, Inc., Sisto International Shipping, Mover's International, Inc., American Insurance Association, NCB&FA, and Hearing Counsel). Several comments also reflect the fact that the bond amount had been construed by shippers, forwarders, and insurance companies to mean that the face amount was the total liability under the bond. (See e.g., comments of Republic Parts, Inc., NCB&FA). Other comments

urged the adoption of the concept of a bond amount based on a particular forwarder's volume of business. The Commission refused to adopt such a concept (20 F.M.C. at 894-95).

The Commission's Director, Bureau of Domestic Regulation, has recently testified in deposition before the District Court that the Commission's staff has always construed the total liability under the forwarder's bond to be the face amount of the bond. Moreover, appended to the Director's deposition is the recommendation from the Managing Director to the Commission when Docket No. 77-53 was instituted, which contains the statement, in a chart reflecting forwarder losses, "[T]hese monies however do not represent total losses paid out by the sureties inasmuch as their complete liability is subject to a maximum of \$10,000 per forwarder." (Emphasis supplied).

Several unsuccessful attempts were made to change the amount of the forwarder's bond by legislation. H.R. 4769, 96th Cong., 1st Sess. (1979); S. 125, 97th Cong., 1st Sess. (1981); H.R. 4374, 97th Cong., 1st and 2d Sess. (1981, 1982). During the course of hearings on these bills, there were indications that Congress considered the total or aggregate bond liability as fixed by the face amount of the bond. See A Bill to Revitalize Maritime Policy, Reorganize Certain Government Agencies, and to Reform Regulation of Maritime Affairs in the United States: Hearings on H.R. 4769 Before the Subcommittee on Merchant Marine of the House of Representatives Committee on Merchant Marine and Fisheries,

Part I, 96th Cong., 1st Sess. 120 (1979) (question of Congresswoman Barbara A. Mikulski); A Bill to Improve the International Ocean Commerce Transportation System of the United States: Hearings on H.R. 4374 Before the Subcommittee on Merchant Marine of the House of Representatives Committee on Merchant Marine and Fisheries, 97th Cong., 1st and 2d Sess. 210-12 (1981) (testimony of Wm. St. John, Chairman, NCB&FA).

Congress also indicated that it was aware that the bond was treated by the Commission and the forwarders and insurers as not being designed to indemnify forwarders for claims against them, but rather to insure financial responsibility in the sense that those given licenses were financially secure enough to operate. In fact, Congress was told that this had been the original intent of the financial responsibility requirement. See A Bill to Revise and Codify the Shipping Act, 1916, and Related Laws: Hearings on S. 1593 and S. 125 Before the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science and Transportation, 97th Cong., 1st Sess. 346, 350 (1981) (statement of Wm. St. John); Hearings on H.R. 4374, supra, at 210, 212, 221-22 (testimony of Wm. St. John). Nevertheless, when it enacted the 1984 Act, Congress "opted to retain the existing system of licensing and bonding . . ." (H.R. Rep. No. 53, Part I, 98th Cong., 1st Sess. 20 (1983)), and provided that an ocean forwarder may not receive a Commission license until it "furnishes a bond in a

form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury." Section 19(a), Shipping Act of 1984.

The bond form itself has four paragraphs which are critical here:

Now, therefore, the condition of this obligation is such that if the Principal shall, while this bond is in effect, supply the services of an ocean freight forwarder in accordance with the contracts, agreements, or arrangements made therefore, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder unless and until such payment or payments shall aggregate the penalty of this bond and in no event shall the Surety's total obligation hereunder exceed said penalty.

This bond shall inure to the benefit of any and all persons for whom the principal shall have undertaken to act as an ocean freight forwarder.

This bond is effective the ____ day of _____, 19__, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by written notice to the Federal Maritime Commission at its office in Washington, D.C. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any contracts, agreements or arrangements made by the Principal after the expiration of said thirty (30) day period but such termination shall not affect the liability of the Principal and Surety for any breach of the condition hereof occurring prior to the date when

said termination becomes effective.³

Petitioners assert that these provisions can and should be reconciled by finding that all persons contracting with an ocean freight forwarder are eligible to claim under the bond (3rd paragraph above), but that the surety's aggregate liability to all such persons will not exceed the amount stated on the face of the bond. Petitioners believe that the key provision in the bond form is the statement that "in no event shall the surety's total obligation hereunder exceed said penalty" (2nd paragraph above). They assert that such statement clearly indicates that notwithstanding any other provision in the bond form, the surety's total liability under the bond may not exceed the face amount of the bond.

ACIPCO and Kristin, on the other hand, interpret the "any and all persons" language in the 3rd paragraph to mean that any person on whose behalf a forwarder acts "has the right to the full benefit of the penalty of this bond, \$30,000, each time the freight forwarder acts." (Reply of ACIPCO and Kristin, 2 (emphasis in original)). ACIPCO and

³ The Bond issued by Harwell on Form FMC-59 was identical to this except for the word "independent" which preceded the words "ocean freight forwarder." The word "independent" was deleted from the bond form following enactment of the 1984 Act to conform to the change in definition of the regulated entity from "independent ocean freight forwarder" to "ocean freight forwarder." Cf. Section 1, Shipping Act, 1916, 46 U.S.C. § 801 (1982), and Section 3(19), Shipping Act of 1984, 46 U.S.C. app. § 1702(19) (Supp. III 1985). It is solely a cosmetic change for the purposes of Form FMC-59 Rev.

Kristin assert that the "contracts, agreements, or arrangements" language in the first paragraph of the bond supports this interpretation, since each action would involve a separate contract, agreement or arrangement.⁴ They also maintain that the language in the fourth paragraph allowing the principal or the surety to terminate the bond at any time by written notice to the Commission provides a safety measure intended to protect the surety from the potential of an open-ended liability.

We do not find ACIPCO/Kristin's interpretation of the bond language persuasive. Rather, we concur with the position taken by Petitioners. Petitioners satisfactorily explain and reconcile all of the provisions of the bond, while ACIPCO and Kristin fail to do so. Most significantly, ACIPCO/Kristin's explanation renders nugatory the provision in the second paragraph with respect to the "total obligation" under the bond.

The only factor in favor of the interpretation sought by ACIPCO and Kristin, that the forwarder bond is intended to be an open-ended quasi-indemnity provision, is the language of the statute, stating that the bond is to "insure financial responsibility." However, this language has been

⁴ Similar language with respect to supplying forwarder services in accordance with contracts, agreements, or arrangements was contained in the original forwarder legislation but was never interpreted by the Commission and has not been carried over into the 1984 Act (see pages 14, 17-18, supra). There is no reason to believe it was intended to do anything other than reflect the manner in which a forwarder's business is conducted.

treated by all segments of the shipping public and the Commission as referring to financial ability to carry on the business of forwarding, and Congress has been so advised.

CONCLUSION

It is the Commission's responsibility to give content to the general terms in statutes and regulations it administers. Dart Containerline Co. Ltd. v. FMC, 639 F.2d 808, 812 (D.C. Cir. 1981). In doing so here, we grant the interpretation requested by Petitioners, which is consistent with the general understanding of all facets of the shipping industry and reflects the basis on which the statute and the bonding requirement have been administered by the Commission and treated by the Congress. The Commission accordingly declares that in promulgating the regulatory requirement for the freight forwarder's surety bond and the form of such bond, the Commission has consistently administered section 19 of the Shipping Act of 1984 and its predecessor, section 44 of the Shipping Act, 1916 to require a bond under which the surety's total maximum liability to all potential claimants would, in no event, exceed the penal sum stated in such bond, and that such is the limit of liability under such bond.

THEREFORE, IT IS ORDERED, That the Petition for Declaratory Order filed on May 22, 1987, by Old Republic Insurance Company, The Surety Association of America, and

the National Customs Brokers & Forwarders Association of
America, Inc. is granted.

By the Commission.

Joseph C. Polking
Joseph C. Polking
Secretary